

STATE OF MICHIGAN
IN THE SUPREME COURT

CITY OF COLDWATER,

Plaintiff-Appellee,

v

CONSUMERS ENERGY COMPANY,

Defendant-Appellant.

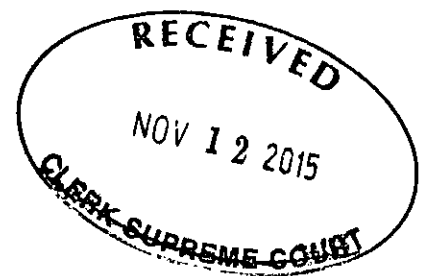
Supreme Court No. 151051

Court of Appeals No. 320181

Branch County Circuit Court
Case No. 13-040185-CZ

Jim B. Weeks (P50001)
Michigan Municipal Electric Association
809 Centennial Way
Lansing, MI 48917
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**SUPPLEMENTAL *AMICUS CURIAE* BRIEF OF
MICHIGAN MUNICIPAL ELECTRIC ASSOCIATION**



STATEMENT OF POSITION AND REQUEST FOR RELIEF

The Michigan Municipal Electric Association (“MMEA”) is an association comprised of 40 municipally-owned electric utilities in Michigan. Among MMEA’s members are the cities of Coldwater and Holland. MMEA previously filed an *amicus curiae* brief in this case and in the *City of Holland v Consumers Energy Company* (Supreme Court No. 151053) and requests leave of this Court to file this supplemental brief which is intended for both cases.

The implications of this Court’s decision in *Great Wolf Lodge of Traverse City, LLC v Pub Serv Comm’n*, 489 Mich 27; 799 NW2d 155 (2011) are continuing to enable MPSC-regulated utilities to interfere with the right of prospective customers to select service from municipally-owned utilities. Specifically, utilities regulated by the Michigan Public Service Commission (“MPSC”) continue to cite the “rule of first entitlement” of subsection 11 of Rule 411 to prevent prospective customers from taking service from municipally-owned utilities.

A recent example occurred in a township adjacent to the City of Traverse City. The developer of a new apartment complex now under construction requested permanent electric service from Traverse City Light & Power (“TCLP”), a utility owned by the City of Traverse City. TCLP was entitled to provide service under MCL 124.3(2) because no other utility was providing service at the site. Accordingly, TCLP agreed to do so.

Upon learning of this, an official of Cherryland Electric Cooperative (“Cherryland”) contacted TCLP informing it that Cherryland had provided electricity to the site “since the 1940s through the 2000s.” The Cherryland official informed TCLP that “[Cherryland] intends to provide service to this development under the rights granted to us by the State

of Michigan statute R 460.3411 Rule 411.” A copy of Cherryland’s e-mail to TCLP as well as the customer’s request for service from TCLP is attached as Exhibit 1.¹

There have been other incidents like this one that MMEA and its members have become aware of. MMEA believes that there have also been an unknown number of similar incidents that it has not become aware of. After all, an investor-owned or cooperative utility only needs to confront the prospective customer with Rule 411 and inform him or her of this Court’s decision in the *Great Wolf Lodge* case. In most instances, that will be enough to secure the prospective customer’s business, without the local municipal utility ever becoming aware of it.

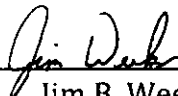
MMEA believes the statements in *Great Wolfe Lodge* that MPSC Rule 411(11) is binding on municipal utilities and/or property owners are mistaken and should be corrected. That can be done in these cases without disturbing the other determinations made in that case or the overall result.

For these reasons and those discussed in our previous *amicus* brief, MMEA respectfully requests that the Court grant the relief being requested by the cities of Holland and Coldwater.

¹ Cherryland withdrew its demand only after TCLP’s counsel advised it that Cherryland was barred by the doctrine of collateral estoppel from litigating the issue based on an earlier case adjudicated by the circuit court for Grand Traverse County.

Respectfully submitted,

MICHIGAN MUNICIPAL ELECTRIC ASSOCIATION

By: 
Jim B. Weeks (P50001)

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809 Centennial Way

Lansing, MI 48917

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Dated: November 12, 2015

EXHIBIT 1

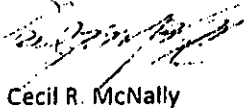


GOODWILL
Northern Michigan

Goodwill Industries of Northern Michigan, Inc as the representative for Carson Square Goodwill LLC is requesting Traverse City Light & Power to provide electrical service to its Carson Square development.

The request for Electric Service is attached:

Thank you,



Cecil R. McNally

CEO

Goodwill Industries of Northern Michigan, Inc.



From: Frank Siepker [<mailto:FSiepker@cherrylandelectric.coop>]
Sent: Tuesday, September 29, 2015 12:02 PM
To: Karla Myers-Beman
Subject: Service territory

Karla,

One of me field engineers noticed a TCLP temporary service at a location on the block between Linden and Woodward, south of Carson "Carson Square Apartments." These premises have historically been a Cherryland Electric Cooperative member/customer and we believe we have the right to service this load again.

Who might we talk to at TCLP to work this potential conflict out?

Thanks,

Frank

Cherryland Electric Cooperative
Frank Siepker, Jr. P.E.
Engineering & Operations Manager

From: Frank Siepker [<mailto:FSiepker@cherrylandelectric.coop>]
Sent: Wednesday, October 07, 2015 9:47 AM
To: Karla Myers-Beman
Cc: Tony Anderson
Subject: Carson Square intent to serve

Karla,

As discussed last week, attached you will find several items validating that Cherryland Electric Cooperative (CEC) has been providing service to the properties now currently under development as Carson Square since the 1940s through the 2000s.

While it appears TCLP has attempted to provide service to the development by installing a temporary construction service, this does not provide the customer an option to switch service providers for the development's electric service. This premises has been a CEC serviced customer so CEC retains the right to service this premises.

In the "ownership & easement.pdf" file you will see the title work and easements showing the CEC service to the premises back into the 1940s.

In the "Patronage capital.pdf" file you will see that we have records documenting that owner of the property and the easement grantor received service from the cooperative on the premises between the time of 1950 and 1976 (CEC's oldest member record document still on file.)

In the "member.pdf" file you will see continued service to this specific Carson Square project premises via member records for services at both 854 and 864 Carson along with maps from the County GIS identifying those physical addresses.

CEC intends to provide service to this development under the rights granted to us by the State of Michigan statute R 460.3411 Rule 411.

If you have any evidence to dispute this action, please respond with such evidence prior to 10-15-2015.

Thank you,

Frank

Cherryland Electric Cooperative
Frank Siepker, Jr. P.E.
Engineering & Operations Manager
P: 231-486-9220
C: 231-649-4492